

FEDERAL ENERGY REGULATORY COMMISSION
Annual Freedom of Information Act Report
FY 2012



February

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ANNUAL FREEDOM OF INFORMATION ACT REPORT
FY 2012

I. BASIC INFORMATION REGARDING REPORT

1. Contact with questions about the report.

Toyia Johnson
FOIA Liaison
Federal Energy Regulatory Commission
888 First Street, NE, Code EA-1
Washington, DC 20426

Toyia.Johnson@ferc.gov

Telephone : 202-502-6088

Toll-free: 1-866-208-3372

FAX Number: 202-208-2106

2. Electronic address for report on the World Wide Web.

<http://www.ferc.gov/legal/ceii-foia/foia/ann-rep.asp>

3. How to obtain a copy of the report in paper form.

Write to the following address:

Public Reference and Files Maintenance Branch Federal Energy Regulatory
Commission 888 First Street, NE, Room 2A Washington, DC 20426

Telephone: 202-502-8371

FAX Number: 202-208-2320

E-Mail: public.referenceroom@ferc.gov

II. MAKING A FOIA REQUEST

1. Name, address, and telephone number of agency component that receive FOIA requests.

Leonard M. Tao
Director, Office of External Affairs
FOIA Officer
Federal Energy Regulatory Commission
888 First Street, NE, Code EA-1
Washington, DC 20426
Telephone: 202-502-8004

Requests may be submitted via:

- **Online FOIA request form:** <http://www.ferc.gov/legal/ceii-foia/foia>
- **Mail:** 888 First Street, NE, Code EA-1, Washington, DC 20426
- **Fax:** 202-208-2106
- **E-mail:** FOIA-CEII@ferc.gov

Please refer to the FOIA Reference Guide on the Commission's Web Site <http://www.ferc.gov/legal/ceii-foia/foia/guide/basics.asp>

2. Some FOIA requests are not granted because (a) the agency has no responsive documents, (b) the responsive documents fall within one or more FOIA exemptions and are not appropriate for discretionary release, or (c) a request has been rendered moot because the responsive documents were subsequently released through other means, such as a negotiated disclosure in the course of a Commission proceeding.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Agency-specific acronyms or other terms.

SIMPLE

- a. **Track One Requests** -- the processing track for a FOIA request that is seeking records that are readily identifiable or were previously cleared for release.

COMPLEX

- b. **Track Two Requests** -- the processing track for a FOIA request that is seeking records that are readily identifiable and require limited review.
- c. **Track Three Requests** -- the processing track for a FOIA request that is seeking records that are complex and/or voluminous and require a significant search and/or review.

2. Definitions of terms used in this Report:

- a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.

- b. **Average Number** – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
- c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
- d. **Component** – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency. All FOIA requests for the Federal Energy Regulatory Commission are received and processed by the Washington DC branch.
- e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests that require the agency to utilize the FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a

consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- h. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial** – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- k. **Multi-Track Processing** – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
 - i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
 - ii. **Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
 - iii. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
- l. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
- m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.
- n. **Perfect Request** – a request for records that reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.

- o. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
 - p. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
 - q. **Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Include the following concise descriptions of the nine FOIA exemptions:
- a. **Exemption 1:** classified national defense and foreign relations information
 - b. **Exemption 2:** information that is related solely to the internal personnel rules and practices of an agency.
 - c. **Exemption 3:** information that is prohibited from disclosure by another federal law.
 - d. **Exemption 4:** trade secrets and other confidential business information
 - e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
 - f. **Exemption 6:** information involving matters of personal privacy
 - g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual
 - h. **Exemption 8:** information relating to the supervision of financial institutions
 - i. **Exemption 9:** geological information on wells

IV. EXEMPTION 3 STATUTES

A. List of Exemption 3 statutes relied on by the Commission during FY 2012.

Statute	Type of Information Withheld	Case Citation	Total Number of Times Relied upon by Agency
16 U.S.C. § 470hh (Archaeological Resources Protection Act of 1979)	Information pertaining to the nature and location of certain archaeological resources	<u>Hornbostel v. U.S. Dep't of the Interior</u> , 305 F. Supp. 2d 21, 30 (D.D.C. 2003), <u>summary affirmance granted</u> , No. 03-5257, 2004 WL 1900562 (D.C. Cir. Aug. 25, 2004).	4

V. FOIA REQUESTS

A. Received, Processed and Pending FOIA Requests

1. The numbers of received, processed, and pending requests.

	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
Federal Energy Regulatory Commission (FERC)	5	74	65	14

B.(1) Disposition of FOIA Requests – All Processed Requests

	Number of Full Grants	Number of Partial Grants/ Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Reasons Other Denials Based on than Exemptions									TOTAL
				No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in chart below	
Federal Energy Regulatory Commission (FERC)	18	28	6	5	0	8	0	0	0	0	0	0	65

B.(2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions” from Section V, B (1) Chart

Component	Description of “Other” Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied upon	TOTAL
Federal Energy Regulatory Commission (FERC)	N/A	0

B.(3) Disposition of FOIA Requests – Number of Times Exemptions Applied

	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. (B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
Federal Energy Regulatory Commission (FERC)	0	1	4	11	10	16	0	0	0	0	1	1	0	0

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals

Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
1	5	5	1

B. Disposition of Administrative Appeals – All Processed Appeals

Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
4	0	0	1	5

C. (1) Reasons for Denial on Appeal – Number of Times Exemptions Applied

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
0	0	0	1	1	0	0	0	0	0	0	0	0	0

C. (2) Reasons for Denial on Appeal – Reasons Other than Exemptions

1. Number of administrative appeals resulting in denial for reasons other than exemptions.

No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other *Explain in chart below
1	0	0	0	0	0	0	0	0	0	0

C. (3) Reasons for Denial on Appeal – “Other” Reasons from Section VI, C (2) Chart

Description of “Other” Reasons for Denial on Appeal from Chart C (2) & Number of Times Those Reasons Were Relied upon	TOTAL 0
Federal Energy Regulatory Commission (FERC)	N/A

C. (4) Response Time for Administrative Appeals

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
27	38	18	97

C. (5)

Ten Oldest Pending Administrative Appeals

	10 th Oldest Appeal	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Appeal
Date of Receipt of Ten Oldest Appeals Date	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	9/4/12
Number of Days Pending	0	0	0	0	0	0	0	0	0	18

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

A. Processed Requests – Response Time for All Processed Perfected Requests

1. Median, average and range in number of days to process all perfected requests.

	SIMPLE (Track 1)				COMPLEX (Track 2 and Track 3)				EXPEDITED			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
Federal Energy Regulatory Commission (FERC)	24	23	4	80	28	99	1	*1632	0	0	0	0

* Request was on hold for 252 days in FY2006 at the behest of the requester.

B. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted

- 1. The median, average and range in number of days to process all perfected requests in which information was granted. (“Granted” refers to full grants and partial grants.)**

	SIMPLE (Track 1)				COMPLEX (Track 2 and Track 3)				EXPEDITED			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
Federal Energy Regulatory Commission (FERC)	25	23	11	34	30	128	10	1632	0	0	0	0

C. Processed Requests – Response Time in Day Increments

1.

SIMPLE
(TRACK 1)

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
Federal Energy Regulatory Commission (FERC)	10	20	0	0	0	0	0	0	0	0	0	0	0	30

2.

COMPLEX
(includes Track 2 & Track 3)

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
Federal Energy Regulatory Commission (FERC)	16	13	1	0	0	0	0	0	0	0	2	0	3	35

REQUESTS GRANTED EXPEDITED PROCESSING

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
Federal Energy Regulatory Commission (FERC)	0	0	0	0	0	0	0	0	0	0	0	0	0	0

D. Pending Requests – All Pending Perfected Requests

	SIMPLE (Track 1)			COMPLEX (Includes Track 2 & Track 3)			EXPEDITED		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
Federal Energy Regulatory Commission (FERC)	6	9	21	8	47	79	0	0	0

E. Pending Requests – Ten Oldest Pending Perfected Requests

Date of Receipt of Ten Oldest Pending	10th Oldest Request and Number of Day Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request and Number of Days Pending
Federal Energy Regulatory Commission (FERC)	9/13/12 11 days	9/10/12 14 days	8/31/12 19 days	8/30/12 20 days	8/10/12 34 days	7/5/12 60 days	6/7/12 80 days	3/7/12 144 days	2/27/12 151 days	2/27/12 151 days

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
Federal Energy Regulatory Commission (FERC)	0	3	8	6	3

B. Requests for Fee Waiver

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
Federal Energy Regulatory Commission (FERC)	0	2	9	9

IX. FOIA PERSONNEL AND COSTS

A. Personnel

	PERSONNEL			COSTS		
	Number of “Full-Time FOIA Employees”	Number of “Equivalent Full-Time FOIA Employees”	Total Number of “Full-Time FOIA Staff” (The sum of Columns	Processing Costs (At initial request and appeal levels)	Litigation- Related Costs	Total Costs
Federal Energy Regulatory Commission (FERC)	1	3.12	4.12	635,637	0	635,637

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
Federal Energy Regulatory Commission (FERC)	215.00	0.03%

XI. FOIA REGULATIONS

The Commission's FOIA regulations, 18 C.F.R. § 388.108, can be accessed through GPO <http://www.gpo.gov/fdsys/pkg/CFR-2011-title18-voll/pdf/CFR-2011-title18-voll-sec388-108.pdf>

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals

	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
Federal Energy Regulatory Commission (FERC)	6	1

B. Consultations on FOIA Requests – Received, Processed, and Pending Consultations

	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>Start</u> of the Fiscal Year	Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Processed</u> by Your Agency During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at Your Agency as of <u>End</u> of the Fiscal Year
Federal Energy Regulatory Commission (FERC)	0	0	0	0

C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency

	10th Oldest Consultation and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending
Federal Energy Regulatory Commission (FERC)										
Date	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Number of Days	0	0	0	0	0	0	0	0	0	0

D. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged

1.

	NUMBER OF REQUESTS RECEIVED		NUMBER OF REQUESTS PROCESSED	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
Federal Energy Regulatory Commission (FERC)	81	74	92	65

2.

	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
Federal Energy Regulatory Commission (FERC)	*4	6

*This number was amended from the FY2011 report to reflect rolling requests.

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged

1.

	NUMBER OF APPEALS <u>RECEIVED</u>		NUMBER OF APPEALS <u>PROCESSED</u>	
	Number Received During Fiscal Year from Last Year’s Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year’s Annual Report	Number Processed During Fiscal Year from Current Annual Report
Federal Energy Regulatory Commission (FERC)	15	5	14	5

2.

	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
Federal Energy Regulatory Commission (FERC)	0	1

